

308 NLRB No. 8

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Philadelphia, PA

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD

ALLEGHENY VALLEY SCHOOL

and

Case 4--CA--20513

DISTRICT 1199C, NATIONAL UNION OF  
HOSPITAL AND HEALTH CARE EMPLOYEES,  
AFSCME, AFL--CIO

CORRECTION

On July 28, 1992, the National Labor Relations Board issued a Decision and Order in the above-captioned case.

Please substitute the attached pages 1 and 2 for your copy to reflect the correct volume number.

Dated: August 14, 1992

**Allegheny Valley School and District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO. Case 4-CA-20513**

July 28, 1992

**DECISION AND ORDER**

BY MEMBERS DEVANEY, OVIATT, AND  
RAUDABAUGH

On May 1, 1992, the General Counsel of the National Labor Relations Board issued a complaint and notice of hearing alleging that the Respondent has violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 4-RC-17726. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondent filed an answer and amended answer admitting in part and denying in part the allegations in the complaint.

On June 24, 1992, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On June 26, 1992, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

**Ruling on Motion for Summary Judgment**

In its answer the Respondent admits its refusal to bargain but attacks the validity of the certification on the basis of the Board's unit determination in the representation proceeding.

All representation issues raised by the Respondent were or could have been litigated in the prior representation proceeding. The Respondent does not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor does it allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondent has not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh Plate Glass Co. v. NLRB*, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

**FINDINGS OF FACT**

**I. JURISDICTION**

The Respondent is a nonprofit Pennsylvania corporation engaged in providing treatment for mentally retarded individuals at various group homes, including a group home located on Clearfield Street, Philadelphia, Pennsylvania. During the year preceding issuance of the complaint, the Respondent received gross revenues in excess of \$250,000 and purchased and received goods valued in excess of \$50,000 directly from points outside the Commonwealth of Pennsylvania.

We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and a health care institution within the meaning of Section 2(14) of the Act. The Union is a labor organization within the meaning of Section 2(5) of the Act.

**II. ALLEGED UNFAIR LABOR PRACTICES**

**A. The Certification**

Following the election held January 21, 1992,<sup>1</sup> the Union was certified on January 30, 1992, as the collective-bargaining representative of the employees in the following appropriate unit:

Included: All full time and regular part-time house manager aides employed at the Employer's Philadelphia group homes.

Excluded: All house managers, habilitation workers, professional case managers, office clericals, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

**B. Refusal to Bargain**

Since about February 3, 1992, the Union has requested the Respondent to bargain, and since about February 3, 1992, the Respondent has refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

**CONCLUSION OF LAW**

By refusing on and after February 3, 1992, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondent has engaged in unfair labor practices affecting commerce within

<sup>1</sup> On January 23, 1992, the Board (Members Devaney and Oviatt; Member Raudabaugh dissenting in part), denied the Respondent's request for review of the Acting Regional Director's Decision and Direction of Election.

the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

#### REMEDY

Having found that the Respondent has violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union, and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

#### ORDER

The National Labor Relations Board orders that the Respondent, Allegheny Valley School, Philadelphia, Pennsylvania, its officers, agents, successors, and assigns, shall

##### 1. Cease and desist from

(a) Refusing to bargain with District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO, as the exclusive bargaining representative of the employees in the bargaining unit.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

Included: All full time and regular part-time house manager aides employed at the Employer's Philadelphia group homes.

Excluded: All house managers, habilitation workers, professional case managers, office clericals, guards and supervisors as defined in the Act.<sup>2</sup>

(b) Post at its facility in Philadelphia, Pennsylvania, copies of the attached notice marked "Appen-

dix."<sup>2</sup> Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

<sup>2</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

#### APPENDIX

##### NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with District 1199C, National Union of Hospital and Health Care Employees, AFSCME, AFL-CIO, as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on terms and conditions of employment for our employees in the bargaining unit:

Included: All full time and regular part-time house manager aides employed at our Philadelphia group homes.

Excluded: All house managers, habilitation workers, professional case managers, office clericals, guards and supervisors as defined in the Act.

ALLEGHENY VALLEY SCHOOL